

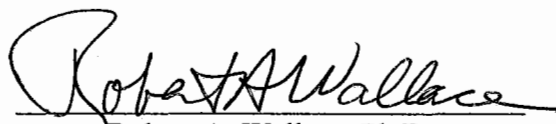
VALUATION OF ECONOMIC LOSS

RE: MARY. WOLSKI

PREPARED FOR: KUBINSKI, SUSKO & SCHONTHALER

BY: ROBERT A. WALLACE, PH.D.

SUBMITTED: OCTOBER 24, 2013

  
Robert A. Wallace, Ph.D.

### **PURPOSE**

The purpose of this report is to assess the economic loss resulting from the wrongful dismissal experienced by Ms. Mary Wolski. This report provides an estimate of the back pay losses suffered by Ms. Wolski as a result of her wrongful dismissal from her job as fire fighter for the city of Erie, PA. Back pay losses include lost earned income and fringe benefits from the time of dismissal to the date of trial, November 12, 2013. Front pay losses, those incurred in the future (after the trial date), are not part of these loss calculations.

In preparing this report I have reviewed the following:

1. Income tax returns Ms. Mary Wolski for tax years 2003–2012.
2. Mary Wolski termination salary rate sheets prepared by Mr. David Chiaramonte.
3. Complaint filed by Mary Wolski in the United States District Court for Western Pennsylvania.
4. Pay stub for Mary Wolski from Accuride Erie dated 9-26-13.
5. Plaintiff and Defendant Pre-trial Narrative Statements.
6. Codified Ordinances of the City of Erie (Pension section) completed 12-3-09 and 12-10-12.
7. Agreement between Erie Fire fighters Local 293 and the City of Erie effective 1-1-12 through 12-31-15.
8. COBRA expenses paid by Mary Wolski for 2007 and 2008.
9. Statement from City of Erie Fire fighters Pension Fund.
10. W-2 information for Mary Wolski from 2008 to 2012.

**BACKGROUND**

On April 13, 2007, Mary Wolski was dismissed from her position as fire fighter for the City of Erie, Pennsylvania. She had been employed in this capacity since 1997. She subsequently obtained employment at Lord Corporation and Accuride Erie. The compensation from this work is less than what she earned while employed by the City of Erie. Ms. Wolski has filed a complaint of wrongful dismissal and seeks to recover damages from that action. The purpose of this report is to value the back pay loss she suffered.

**Information relevant to this analysis:**

Sex: Female

Race: White

Education: Bachelor's degree (Mercyhurst University)

Marital Status: Single

Date of Termination: April 13, 2007

Date of birth: May 31, 1962

Age at time of termination: 44.9 years.

Current age: 51.5 years

Current life expectancy: 34.0 years

### **ECONOMIC LOSS**

Ms. Wolski was dismissed on April 12, 2007 by the City of Erie where she was employed as a fire fighter for the City of Erie, Pennsylvania. She re-entered the workforce in 2008 and has been an active workforce participant since that time. However, her earned income and benefits from this work are less than what she earned as a fire fighter. As a result, she has suffered an economic loss.

The economic loss is equal to the sum of the following values: 1) the value of lost wages throughout the period; and 2) the loss of fringe benefits which she would have received as a result of her employment. These losses will be calculated from the date of dismissal to the date of trial. For valuation purposes the assumed date of trial is November 12, 2013. Thus, all losses calculated in this report are valued as of that date. The value of these losses will be calculated in the following sections of this report. In calculating these losses it is assumed that they result from her termination from her employment as a fire fighter. .

#### **Income Losses**

The loss of income resulting from her inability to work as a fire fighter is an economic loss for Ms. Wolski. This economic loss is equal to the value of the lost income from the date of dismissal to the date of trial.

Prior to her dismissal Ms. Wolski worked as a fire fighter. Her wage history prior to her dismissal in 2007 is shown in Table 1. In the five years before her dismissal, Ms.

Wolski's wages increased each year with the exception of a dip in 2005 when her mother was terminally ill. It is assumed that if she remained a fire fighter that her earned income would increase in line with the labor agreement between the Fire Fighter's union and the City of Erie.

**TABLE 1**

**PRE-DISMISSAL INCOME**

<u>YEAR</u>	<u>Actual Income</u>
2003	\$47,619
2004	54,765
2005	43,084
2006	55,896
2007	22,227*

\*through 4/13/07

Ms. Wolski re-entered the workforce in 2008. She has worked each year since then, albeit at a reduced income level. Her earned income since her dismissal is shown in Table 2 below. Her reduced income following her dismissal represents an economic loss. The loss is calculated as the difference between her actual earned income and her income as a fire fighter.

Prior to 2007, Ms. Wolski's income was rising. Termination salary rate sheets prepared by Dave Chiaramonte show that, if Ms. Wolski had remained with the Fire Department,

her earned income would continue to increase. Table 2 shows her estimated post-dismissal earned income based on contract stipulations from the time of dismissal to 2011. Estimates for 2012 and 2013 are based on the Agreement between Erie Fire Fighters local 293 and the City of Erie, Article V (Compensation).

**TABLE 2**

**POST-DISMISSAL ESTIMATED INCOME**

<u>YEAR</u>	<u>Estimated Income</u>
2007	\$ 38,481
2008	54,204
2009	56,529
2010	59,228
2011	61,447
2012	62,676
2013	55,713*

\* through 11/12/13

Table 3 below shows Ms. Wolski's actual earned income from the date of dismissal to the present time.

**TABLE 3**  
**POST-DISMISSAL ACTUAL INCOME**

<u>YEAR</u>	<u>Actual Income</u>
2007	\$ 0
2008	3,317
2009	17,201
2010	36,620
2011	36,144
2012	26,690
2013	23,938 <sup>1</sup>

To value the past earned income loss – back pay, actual pay values are subtracted from the estimated earnings for each year. Ms. Wolski's estimated earnings if she remained a fire fighter were shown in Table 2.

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<sup>1</sup> Actual income through 9/26/13 plus projected income to date of trial.

The earned income loss for each year is shown in Table 4 below. The second column of that table shows Ms. Wolski's actual earned income for each year. Ms. Wolski's expected earned income for each year is shown in column three. Loss values shown in column four are the result of subtracting actual earnings from estimated earnings for a given year. These loss estimates are valued as of the date of trial and are shown for each year in column five. The interest rate used to obtain these loss estimates was 6.0 percent, a rate that was stipulated in previous proceedings on this matter. The total earned income losses – back pay is **\$295,484**.

**TABLE 4****EARNED INCOME LOSSES - BACK PAY**

<b><u>Year</u></b>	<b><u>Actual Income</u></b>	<b><u>Expected Income</u></b>	<b><u>Loss</u></b>	<b><u>PV Loss</u></b>
2007 <sup>2</sup>	\$ 0	\$38,480	\$38,370 <sup>3</sup>	\$54,141
2008	3,317	54,204	50,887	67,545
2009	17,201	56,529	39,328	49,247
2010	36,620	59,228	22,608	26,708
2011	36,114	61,447	25,333	28,233
2012	26,690	62,676	35,986	37,835
2013 <sup>4</sup>	23,938	55,713 <sup>5</sup>	31,775	31,775
<b>Total Loss</b>				<b>\$295,484</b>

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<sup>2</sup> Partial year.

<sup>3</sup> Annualized earned income amounts to \$53,292.

<sup>4</sup> Values in this row are as of November 12, 2013, the expected date of trial.

<sup>5</sup> Estimated earned income for all of 2013 is \$64,556.



**Fringe Benefit Losses – Back Pay**

In addition to the earned income projected above Ms. Wolski received non-cash (fringe) benefits from her employer. She received healthcare benefits and pension benefits as a fire fighter. The loss of these benefits is an economic loss to Ms. Wolski.

Subsequent to her dismissal Ms. Wolski made COBRA payments amounting to \$8,121.

These payments represent a direct back pay loss. The present value of this loss is shown in Table 5. The present value calculations resulted from using a 6.0 percent interest rate from the time of the loss to the date of trial.

Her present employer provides healthcare benefits. As such, she has mitigated the loss of this fringe benefit provided by the City of Erie. Except for the COBRA payments, there is no back pay loss for healthcare. COBRA payments made by Ms. Wolski are back pay losses as they are direct payments by her. If she was not dismissed she would not have experienced these out of pocket expenses. The present value of the health care losses is **\$10,298**. The components of this loss are presented in Table 5 below.

**TABLE 5****HEALTH CARE BENEFIT LOSSES – BACK PAY**

<u>Year</u>	<u>COBRA Payment</u>	<u>Loss</u>	<u>PV Loss<sup>6</sup></u>
2007	\$ 2,278	\$2,278	\$ 3,206
2008	5,342	5,342	7,092
<b>Total loss</b>			<b>\$10,298</b>

Ms. Wolski is not participating in an employer sponsored pension plan because she is financially unable to do so. As a fire fighter she was eligible for pension benefits. Her income level and contributions by the City of Erie made this possible. According to documents from an Act 11 Interest Arbitration hearing, annual pension contributions by the City of Erie amounted to \$12,693 for a new hire in 2007. Payments for Class A fire fighters are estimated to be \$21,155 per year.<sup>7</sup>

The pension benefit loss- back pay is shown in Table 6. Contributions by the City of Erie are based on earned income. Changes in estimated earned income from Table 2 were used to estimate the incremental changes in employer contributions for each year. The present value (PV) calculations of these yearly benefit losses are based on a 6.0 percent interest rate. The total pension benefit- back pay is \$181,237.

<sup>6</sup> Present value as of November 12, 2013, using an interest rate of 6.0 percent

<sup>7</sup> New hires earn 60 percent of what Class A Fire Fighters do.

TABLE 6

## PENSION BENEFIT LOSSES – BACK PAY

<u>Year</u>	<u>Increment</u> <sup>8</sup>	<u>Pension Loss</u>	<u>PV Loss</u>
2007 <sup>9</sup>	-	\$15,232 <sup>10</sup>	\$21,431
2008	1.7%	21,515 <sup>11</sup>	28,558
2009	4.3%	22,440	28,099
2010	4.8%	23,517	27,781
2011	3.7%	24,387	27,178
2012	2.0%	24,875	26,153
2013 <sup>12</sup>	3.0%	22,034 <sup>13</sup>	22,034
<b>Total Loss</b>			<b>\$181,237</b>

Thus, the fringe benefit loss – back pay is obtained by adding the total healthcare benefit loss and the pension benefit loss. Thus, the total fringe benefit loss – back pay is \$191,535, \$10,298 plus \$181,237

Taxes Losses

Finally,

<sup>8</sup> Based on percentage changes in annual earn income in Table 4 (column 3).

<sup>9</sup> Partial year.

<sup>10</sup> Annualized loss is \$21,155.

<sup>11</sup> \$21,155 times 1.017.

<sup>12</sup> Partial year. Values in this row are as of November 12, 2013, the expected date of trial.

<sup>13</sup> Estimated pension contribution for all of 2013 is \$25,621.

**TOTAL ECONOMIC LOSS – BACK PAY**

The total value of Ms. Wolski's economic loss is equal to the sum of the earned income loss and the fringe benefit losses. The total value of these losses is calculated below.

Earned Income Loss	\$295,484
Fringe Benefit Loss	191,535
Total Losses – Back Pay	\$487,019

The estimated losses shown above are calculated to a reasonable degree of economic certainty.

**Adjustment for Tax Rate Damages**

The total back pay loss incurred by Ms. Wolski as a result of her dismissal from her fire fighter job is equal to \$487,019 as estimated above. An award in this amount would be subject to Federal income taxes.<sup>14</sup> If awarded damages in this amount as a lump sum, Ms. Wolski would incur a greater tax burden than if the losses were sprinkled throughout the back pay horizon. As a result if awarded a lump sum settlement she would suffer damages from the additional tax required. Thus, the damages calculated above would have to be grossed-up to provide relief from these additional taxes. The additional taxes would be partially offset by the taxes that Ms. Wolski would have paid if termination had

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<sup>14</sup> Small Business Job Protection Act of 1996 (Public Law No. 104-88, Sec. 1605; 26 U.S.C. §104(a)(2))

not occurred. The gross-up amount depends on size of the award. Calculations regarding this value are very complex and be determined at the time of the award, if any.